

RICHARD SCOTT COHEELY
Claimant

THE ENERGY CENTER
Respondent
AND

**KANSAS BUILDING INDUSTRY WORKERS
COMPENSATION FUND**
Insurance Carrier

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Docket No. 225,598

Claimant requested review of the preliminary hearing Order dated October 2, 1997, entered by Administrative Law Judge Bryce D. Benedict.

The Administrative Law Judge denied claimant's request for temporary total disability and medical benefits for a back injury which allegedly occurred while claimant was seeking medical treatment due to allegedly breathing acidic fumes at work. The Administrative Law Judge denied claimant's request on the basis that claimant failed to prove that he sustained personal injury as a result of such inhalation.

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be set aside and this matter remanded to the Administrative Law Judge for further proceedings.

Under K.S.A. 44-534a, as amended, the Appeals Board has the jurisdiction and authority to review from a preliminary hearing the findings whether claimant sustained personal injury by accident and whether that accident arose out of and in the course of employment with respondent.

Claimant worked for the respondent as a service technician and installer from April 1994 until his termination on August 1, 1997. On the morning of August 1, 1997, claimant breathed muriatic acid fumes for a two-to-five-minute period while beginning to clean up an acid spill. Shortly after the cleanup, claimant began to experience breathing difficulties and other symptoms which he believed were related to the inhalation of fumes. Later that afternoon, claimant sought medical treatment at a hospital emergency room for hyperventilation symptoms. Claimant alleges that while at the hospital he fell from a gurney and injured his back. Claimant is not seeking benefits at this time for problems related to the inhalation of fumes, rather claimant seeks benefits for the alleged back injury.

The Appeals Board finds the Administrative Law Judge applied the wrong test to determine whether claimant was entitled to workers compensation benefits for the back injury. According to the principles set forth in Taylor v. Centex Construction Co., 191 Kan. 130, 379 P.2d 217 (1963), securing medical treatment for a work-related incident is an activity which is deemed to arise out of and in the course of employment. The test is not whether the inhalation caused personal injury, rather the test is whether the alleged inhalation caused symptoms or were of such nature that it was reasonable for claimant to seek medical consultation and whether claimant then injured his back while seeking such medical consultation.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated October 2, 1997, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, set aside and this matter is hereby remanded to the Administrative Law Judge to determine whether claimant was reasonably seeking medical treatment for a work-related incident at the time of the alleged back injury, whether claimant injured his back while seeking such treatment, and, if so, whether claimant presently needs medical treatment for that injury.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Walter P. Robertson, Junction City, KS
Matthew S. Crowley, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director